

TEMPORARY OR PARTIAL AWARD  
(Reversing Award and Decision of Administrative Law Judge)

Injury No.: 04-085262

Employee: Caren Braswell

Employer: Missouri State Highway Patrol

Insurer: Self-Insured  
c/o Missouri Highway & Transportation Commission

Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

Date of Accident: February 1, 2004

Place and County of Accident: Stone County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. We have reviewed the evidence, read the briefs of the parties, heard oral argument and considered the whole record. Pursuant to section 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated March 24, 2006. The award and decision of Administrative Law Judge Margaret Ellis Holden, is attached hereto solely for reference.

I. Stipulated Issues

The parties stipulated to the following issues to be heard before the administrative law judge: whether or not employee sustained an injury due to an accident arising out of and in the course of her employment; whether or not there is a medical causal relationship between injuries complained of and the alleged accident; whether or not the employer is liable or responsible for any past due unpaid medical expenses; whether the employee has sustained injuries that will necessitate future medical care and treatment in order to cure and relieve employee from the effects of the injury sustained; and whether or not employee is entitled to receive temporary total disability benefits on account of the injury.

II. Stipulated Facts

At the commencement of trial the parties stipulated to the following facts: on or about February 1, 2004, Missouri State Highway Patrol was an employer operating subject to the Missouri Workers' Compensation Law; employer's liability was fully self-insured; on February 1, 2004, Caren Braswell, employee, was an employee of the employer, and the employee was working subject to the Missouri Workers' Compensation Law; employee timely notified employer of her injury as required by section 287.420 RSMo; employee's claim was timely filed within the time prescribed by section 287.430 RSMo; employee's average weekly wage was sufficient to allow a compensation rate of \$491.08 for temporary total disability benefits and \$347.05 for permanent partial disability benefits; and employer to date has not provided any medical treatment nor has employer paid any temporary total disability benefits.

### III. Facts

The facts were accurately recounted in the award issued by the administrative law judge including the commendable timeline graph setting forth the events and circumstances post-accident as well as employee's ensuing medical treatment. The Commission will supplement the administrative law judge's award with facts as necessitated in the instant opinion.

In summary fashion, employee was a full time employee of the Missouri State Highway Patrol, as a trooper, from August 1, 1993, through May 13, 2005; while on patrol the evening of February 1, 2004, employee responded to a call to provide assistance at a private residence in Stone County; when employee arrived at the private residence in Stone County there were several private individuals/citizens at the residence along with several local law enforcement officers involved in an altercation; during this event one of the individuals had to be restrained by 3 or 4 law enforcement officers and was forced face down on the floor of the residence with his hands restrained behind his back by the officers; while the individual was restrained employee observed another officer draw what employee perceived to be a service revolver from the officer's right side and aim it at the restrained individual; the officer began squeezing the trigger of the weapon and employee, perceiving the officer was aiming a service revolver at the restrained individual and was shooting him began shouting "no," and the employee attempted to intervene as she was under the impression that the restrained individual was going to be executed by the officer.

In reality the police officer had drawn a taser, not a service revolver; however, when the police officer squeezed the trigger on the weapon, employee was of the impression or perception that the officer was intending to shoot the restrained individual; employee began experiencing emotional problems subsequent to the taser event occurring February 1, 2004.

Subsequent to the taser event occurring February 1, 2004, in response to a formal complaint of misconduct lodged against the employee, the Missouri State Highway Patrol instituted an investigation related to employee's actions at the private residence the evening of February 1, 2004. Subsequently, based on its investigation of the circumstances occurring February 1, 2004, the State Highway Patrol classified the complaint as substantiated and served formal charges and an offer of discipline on employee by July 14, 2004; and on July 20, 2004, employee waived rights to appeal any formal charges and accepted the offer of discipline from the Missouri State Highway Patrol.

Simultaneously with the State Highway Patrol investigation and disciplinary proceeding, employee was receiving medical care and treatment for her mental condition.

The details of these facts and events surrounding the occurrence of February 1, 2004, and thereafter, were thoroughly detailed and analyzed by the administrative law judge, and accurately set forth in a timeline graph by the administrative law judge.

Employee utilized three experts in attempting to prove and/or establish a medical causal relationship between the accident occurring February 1, 2004, and her resultant injury, i.e., her present mental stress disorder. The three experts were Roy Jack Gillispie, M.D., Donald E. McGehee, Ph.D, board certified psychologist; and Dale A. Halfaker, Ph.D, licensed psychologist. Employer did not adduce any expert testimony.

Dr. Gillispie testified by deposition, and in summary fashion, his testimony was as follows: employee was a patient of Dr. Gillispie since 2002; as early as April 17, 2002, Dr. Gillispie diagnosed anxiety and depression and he began a course of treatment for these conditions; on July 29, 2004, employee appeared or presented with a significant problem of anxiety; employee described an event at work that had caused a major effect; and the diagnosis of Dr. Gillispie on July 29, 2004, was post-traumatic stress disorder with depression and

anxiety related to the event described at work; and was unable to work.

Dr. Gillispie was of the opinion at that point employee

In answer to a hypothetical question propounded to him by employee's attorney concerning the taser event occurring February 1, 2004, the unequivocal opinion of Dr. Gillispie was that the taser event was a substantial contributing factor causing employee's diagnosis of post-traumatic stress disorder which further worsened her pre-existing depression and anxiety; and in conclusion, Dr. Gillispie was of the opinion that the diagnosis of post-traumatic disorder was definitely a change from any of employee's prior conditions.

On re-direct examination, Dr. Gillispie opined that it is not unusual for post-traumatic stress disorder to not immediately manifest itself subsequent to a traumatic event.

Dr. McGehee testified at trial; Dr. McGehee has a Ph.D in psychology; employee initially presented to Dr. McGehee for treatment on May 11, 2004; Dr. McGehee noted she was distraught due to traumatic experience; the presenting problem employee described to Dr. McGehee was an event in the line of duty involving the use of a taser gun by another law enforcement officer; Dr. McGehee indicated that employee's current symptoms were due to occupational events resulting in post-traumatic stress disorder and depression; Dr. McGehee noted "depressive reaction to trauma due to her peer inappropriate behavior"; this entry was explained by Dr. McGehee to mean it was part of the symptoms that he utilized in deriving the post-traumatic stress disorder diagnosis.

After the May 11, 2004 visit, the diagnosis of Dr. McGehee was as follows: post-traumatic stress disorder pursuant to DSM-IV; acute post-traumatic stress disorder, Axis I 309.81; also Axis I 296.2, major depression; and recommended sick leave for seven working days.

On May 11, 2004, Dr. McGehee also noted that employee was not emotionally ready to return to work; employee experienced, witnessed or was confronted with an event or events that involved actual or threatened death or serious injury or a threat to the physical integrity of self and others. Dr. McGehee testified that the event was the taser incident occurring February 1, 2004, and the diagnosis of post-traumatic stress disorder was due to this event. The diagnosis of post-traumatic stress disorder and depression did not change during the treatment administered by Dr. McGehee, and he excused employee from work from July 29, 2004, to January 26, 2005. Dr. McGehee continued to see employee through June 21, 2005.

In the opinion of Dr. McGehee, the traumatic event, the taser incident occurring February 1, 2004, absolutely was a substantial factor in causing employee's post-traumatic stress disorder; furthermore, through June 21, 2005, all of his services rendered employee were reasonable and necessary; he last saw employee June 21, 2005; she was not psychologically at maximum medical improvement.

Dr. McGehee did opine that the subsequent events, including the disciplinary investigation and proceeding, were experiences that she had to process and that the process related back to the event of February 1, 2004. On re-direct, Dr. McGehee unequivocally stated his opinion that the tasing incident caused her post-traumatic stress disorder.

Dr. Halfaker's testimony coincided with the testimony of Dr. Gillispie and Dr. McGehee, i.e., Dr. Halfaker was of the opinion that the taser event occurring February 1, 2004, represented a significant stressor for employee which employee had trouble resolving, resulting in a diagnosis of post-traumatic stress disorder and major depressive disorder.

Exhibit F was admitted into evidence without objection. It is an itemization of past unpaid medical expenses incurred on account of the accident in the total amount of \$3,746.18. Employer adduced no evidence contra.

#### IV. Rulings of Law

The dispositive issue in the instant case is whether or not employee's medical condition, a mental disorder, post-traumatic stress disorder and major depression, is medically causally related to an injury by accident arising out of and in the course of employment. Section 287.120.1 RSMo. In other words, was the taser event occurring February 1, 2004, an accident or traumatic event constituting a substantial factor in causing employee's resulting medical condition or mental disorder, post-traumatic stress disorder and major depression.

The administrative law judge denied benefits by applying the provisions of section 287.120.8 RSMo, to conclude that employee did not sustain an injury due to an accident arising out of and in the course of her employment.

Employee appeals to the Commission contending that the administrative law judge erred in applying section 287.120.8 RSMo, in determining that employee did not sustain an accidental injury arising out of and in the course of her employment. At the outset the Commission notes that the evidence is uncontroverted that employee suffers from a mental disorder, i.e., post-traumatic stress disorder and major depression.

Section 287.120.8 applies only to claims of mental injury resulting from work related stress. *E.W. v. Kansas City Missouri School Dist.*, 89 S.W.3d 527 (Mo. App. W.D. 2002). Claims of mental injury based upon stress caused by work conditions are referred to as "non-traumatic mental/mental claims". *E.W. v. Kansas City Missouri School Dist.*, 89 S.W.3d 527 (Mo. App. 2002).

A non-traumatic mental/mental claim pursuant to the provisions of section 287.120.8 RSMo, requires proof of extraordinary and unusual work stress other than ordinary day-to-day mental stress as experienced by all employees. *E.W. v. Kansas City Missouri School Dist.*, 89 S.W.3d 527 (Mo. App. 2002). The need to distinguish extraordinary mental stress from ordinary day-to-day stress is not applicable to a mental injury arising from a traumatic event. *E.W. v. Kansas City Missouri School Dist.*, 89 S.W.3d 527 (Mo. App. 2002).

In the instant case, employee's claim of mental injury is not based upon work related stress, but, rather, is based upon the taser incident that occurred February 1, 2004. If employee's claim of mental injury can be proven to be based upon the traumatic taser event occurring February 1, 2004, and not from work related stress, the compensability of employee's claim must be determined under section 287.120.1 RSMo. *Jones v. Washington University*, 199 S.W.3d 793 (Mo. App. E.D. 2006).

The Commission is guided by several legal principles set forth in various Missouri Appellate Court decisions.

In the case of *Royal v. Advantica Restaurant Group, Inc.*, 194 S.W.3d, 371 (Mo. W.D. 2006), the Missouri Court of Appeals, Western District, succinctly stated at page 376, the following:

The claimant in a workers' compensation case has the burden to prove all essential elements of her claim, *Cook v. St. Mary's Hosp.*, 939 S.W.2d 934, 940 (Mo. App. W.D. 1997), *overruled on other grounds by Hampton*, 121 S.W.3d at 226, including "a causal connection between the injury and the job[.]" *Williams v. DePaul Health Ctr.*, 996 S.W.2d 619, 631 (Mo. App. E.D. 1999), *overruled on other grounds by Hampton*, 121 S.W.3d at 226. As correctly noted by the Commission in its decision, this case is governed by section 287.020.2, which provides:

An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a

triggering or precipitating factor.

“Awards for injuries ‘triggered’ or ‘precipitated’ by work are nonetheless proper *if* the employee shows that the work is a ‘substantial factor’ in the cause of the injury.” *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852, 853 (Mo. banc 1999). Thus, in determining whether a given injury is compensable, a “work-related accident can be both a triggering event and a substantial factor.” *Bloss v. Plastic Enters.*, 32 S.W.3d 666, 671 (Mo. App. W.D. 2000), *overruled on other grounds by Hampton*, 121 S.W.3d at 225. “Determinations with regard to causation and work-relatedness are questions of fact to be ruled upon by the Commission . . . .” *Id.* Furthermore, in making such determinations, the Commission is the judge of the credibility of witnesses and has discretion to determine the weight to be given opinions. *Id.*

Medical causation not within common knowledge or experience must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221 (Mo. App. 1992).

In the instant case, employee adduced testimony from three experts who all opined that the taser event occurring February 1, 2004, substantially caused or substantially contributed to cause employee’s mental disorder, i.e., post traumatic stress disorder and major depression. The record on appeal does not show conflict in this evidence or impeachment of these witnesses. Employer did not produce an expert opinion concerning the issue of the existence or lack of a medical causal relationship between the traumatic taser event occurring February 1, 2004 and employee’s resultant medical condition.

Clearly medical causation concerning a medical condition such as post-traumatic stress disorder and major depression are not within common knowledge or experience of lay people, and such mental disorders must be established by scientific or medical evidence showing a cause and effect relationship, or lack thereof.

In reviewing and considering medical evidence the Commission is further guided by the following additional principles of law set forth in *Houston v. Roadway Express, Inc.*, 133 S.W.3d 173 (Mo. App. S.D. 2004):

Generally, acceptance or rejection of medical evidence is for the Commission, *Sullivan*, 35 S.W.3d at 884[9], and it is free to disbelieve uncontradicted and unimpeached testimony. *Alexander v. D.L. Sitton Motor Lines*, 851 S.W.2d, 525, 527 [1] (Mo.banc 1993). Even so, when a workers’ compensation record shows no conflict in the evidence or impeachment of witnesses, ‘the reviewing court may find the award was not based upon disbelief of the testimony of the witnesses.’ *Corp v. Joplin Cement Co.*, 337 S.W.2d 252, 258[6] (Mo.banc 1960). As the *Corp* court explained it,

“the Commission may not arbitrarily disregard and ignore competent, substantial and undisputed evidence of witnesses *who are not shown by the record to have been impeached*, and the Commission may not base their finding upon conjecture or their own mere personal opinion unsupported by sufficient competent evidence.”

The Commission does not agree with the contention of employer that even a lay person unfamiliar with medical intricacies could see that employee’s mental stress disorder was not caused by the tasing incident of February 1, 2004. In order to make such a finding, the Commission would need to disregard and ignore testimony from three experts in the field, and the Commission’s opinion would be based on mere personal conjecture unsupported by competent evidence.

The Commission concludes that employee’s claim of mental injury was not based upon work related stress, but, rather, was based on the taser incident occurring February 1, 2004. As stated in the *E.W.* case, *supra*,

this is referred to as a traumatic mental/mental claim as opposed to a non-traumatic mental/mental claim. Case law makes it clear that section 287.120.8 RSMo, is meant to apply only to those cases in which the employee suffers a non-traumatic mental/mental claim.

As previously stated, three experts testified that employee's resultant mental disorder, post-traumatic stress disorder and major depression were caused by the traumatic event occurring February 1, 2004, involving the taser. This is clearly a case of traumatic mental/mental claim.

There was evidence presented that employee had some levels of mental or emotional stress prior to the accident occurring February 1, 2004, but the expert testimony presented at the trial of this case established that employee's present mental disorder for which she claims benefits resulted from the traumatic taser event occurring February 1, 2004 and not from any type of stressful events that may have pre-existed or existed subsequently. Therefore, the provisions of section 287.120.8 do not apply to the instant claim and employee should not have been required to present evidence that the stress from the event of February 1, 2004, was extraordinary and unusual. In doing so, we feel the administrative law judge committed reversible error.

Accordingly, we reverse the conclusion of the administrative law judge concerning the issue of compensable accident. We find pursuant to the provisions of section 287.120.1 RSMo, that employee sustained an injury due to an accident arising out of and in the course of her employment, which has resulted in her mental disorder, post-traumatic stress disorder and major depression. Consequently, the issues of accident and medical causal relationship are decided favorably in behalf of the employee.

As to the issue of past medical expenses, claimant's Exhibit F was submitted without objection and consists of an itemization of unpaid medical expenses attributable to the injury occurring February 1, 2004, in the total amount of \$3,746.18. Employer is liable to pay employee these medical expenses itemized in Exhibit F in the total amount of \$3,746.18.

As to the issue of temporary total disability the testimony of employee as well as the testimony of Dr. McGehee is uncontroverted therefore employer is responsible and liable to employee for 26 weeks of temporary total disability benefits at the stipulated rate of \$491.08 per week representing a time frame from July 29, 2004, through January 26, 2005.

The medical testimony of Dr. McGehee is also uncontroverted as to his opinion that as of employee's last visit June 21, 2005, she had not psychologically attained maximum medical improvement; and therefore, employee is entitled to receive future medical care and treatment deemed reasonable and necessary to cure and relieve her from the effects of her injury, i.e., her mental disorder, post-traumatic stress disorder, as well as major depression.

## V. Conclusion

Pursuant to the provisions of section 287.120.1 RSMo, the Commission concludes that employee sustained an injury due to an accident arising out of and in the course of her employment entitling employee to receive workers' compensation benefits as provided by law.

Employee's resultant medical condition, a mental disorder, i.e., post-traumatic stress disorder as well as major depression, is medically causally related to her compensable accident.

Due to the compensability of the accident employer is responsible for unpaid past medical expenses totaling \$3,746.18, as set forth in claimant's Exhibit F.

Employee is also entitled to receive additional psychological treatment deemed reasonable and necessary to

cure and relieve her from the effects of this injury.

This case is remanded to the Division of Workers' Compensation with the employer being responsible to provide workers' compensation benefits as appropriate pursuant to the provisions of Workers' Compensation Act due to this compensable accident.

William Francis, Attorney at Law, is allowed a fee of 25% of the benefits awarded for necessary legal services rendered to employee, which shall constitute a lien on said compensation.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Margaret Ellis Holden, issued March 24, 2006, is attached and incorporated to the extent it is not inconsistent with our findings, conclusions, award and decision herein.

Given at Jefferson City, State of Missouri, this 21<sup>st</sup> day of March, 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

**AWARD**

Employee: Caren Braswell

Injury No. 04-085262

Dependents: N/A

Employer: Missouri State Highway Patrol

Additional Party: Second Injury Fund

Insurer: Self-insured c/o Missouri Highway and Transportation Commission

Hearing Date: 2/24/06

Checked by: MEH

## **FINDINGS OF FACT AND RULINGS OF LAW**

1. Are any benefits awarded herein? NO
2. Was the injury or occupational disease compensable under Chapter 287? NO
3. Was there an accident or incident of occupational disease under the Law? NO
4. Date of accident or onset of occupational disease: N/A
5. State location where accident occurred or occupational disease was contracted: STONE COUNTY, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?  
YES
7. Did employer receive proper notice? YES
8. Did accident or occupational disease arise out of and in the course of the employment?  
NO
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
ALLEGED STRESS CLAIM.
12. Did accident or occupational disease cause death? NO Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/AA

Employee: CAREN BRASWELL

Injury No. 04-085262

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: N/A
20. Method wages computation: N/A

## **COMPENSATION PAYABLE**

21. Amount of compensation payable: NONE

Unpaid medical expenses: \$0

0 weeks of temporary total disability (or temporary partial disability)



0 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning n/a, for  
Claimant's lifetime

22. Second Injury Fund liability: Yes No X Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits

Permanent total disability benefits from Second Injury Fund:  
weekly differential (0) payable by SIF for 0 weeks beginning n/a  
and, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

23. Future requirements awarded: NONE

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following  
attorney for necessary legal services rendered to the claimant:

WILLIAM FRANCIS, JR.

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Caren Braswell

Injury No. 04-085262

Dependents: N/A

Employer: Missouri State Highway Patrol

Additional Party: Second Injury Fund

Insurer: Self-insured c/o Missouri Highway and Transportation Commission

Hearing Date: 2/24/06

Checked by: MEH

On February 24, 2006, the parties appeared before the undersigned administrative law judge for a temporary hearing. The employer appeared represented by Mary Thompson, and the claimant appeared in person represented by William Francis, Jr. Memorandums of law were submitted by March 17, 2006.

The parties stipulated that on or about February 1, 2004, Missouri State Highway Patrol was an employer

operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully self-insured c/o Missouri Highway and Transportation Commission. On the alleged injury date of February 1, 2004, Caren Braswell was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. This employment occurred in Stone County, Missouri. The claimant notified the employer of her injury as required by Section 287.420. The claimant's claim was filed within the time prescribed by Section 287.430. At the time of the claimed occupational disease, claimant's average weekly wage was sufficient to allow the compensation rate of \$491.08 for temporary total disability and \$347.05 for permanent partial disability benefits. No temporary total disability benefits have been paid. The employer has paid no medical benefits. The attorney fee sought is 25%.

#### ISSUES:

1. Whether the claimant sustained an accident or occupational disease which arose out of the course and scope of employment.
2. Whether the accident or occupational disease caused the injuries and disabilities for which benefits are now being claimed.
3. Whether the employer is obligated to pay for past medical expenses.
4. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.
5. Any temporary total disability benefits owed to the claimant.

#### FINDINGS OF FACT:

The Claimant was employed full time by the Missouri State Highway Patrol as a trooper from August 1, 1993, until she resigned on May 13, 2005. She is currently 38 years of age and holds two degrees from Drury University – one in criminal justice and the other in psychology. Her duties as a trooper were focused on insuring public safety on the roadways of Missouri. As a trooper, she had a duty to enforce Missouri laws related to driving and motor vehicles. In the line of duty, she would respond as necessary to assist other law enforcement agencies.

Claimant testified that the work of a Highway Patrol trooper could be very stressful. The job can and does involve exposure to violence, the use of force, the risk of being injured or killed in the line of duty, and being a witness to tragic and often grotesque injuries and even death. In fact, Claimant testified that as a Highway Patrol trooper, she had personally experienced being sprayed with human brain matter when she witnessed a man shoot himself in the head. She also testified that she had been in one-on-one physical altercations with men much larger than she, one of whom was high on methamphetamine. She testified that she witnessed the shooting of a suspect by a

deputy and that the suspect subsequently died at the scene in her arms. She also testified that she was called to a residence after a school-age boy she knew committed suicide by hanging himself. She said she had to cut this young boy down from where he was hanging.

While on patrol the evening of February 1, 2004, she heard a call over her radio for “back-up” at a rural residence in Stone County, Missouri, where Stone County Sheriff’s deputies (including Deputy Matt Maggard) had responded to a 911 call. The address for this residence sounded familiar to Claimant, and she placed a call to confirm that the residence was that of a man she knew named Jimmy Teague.

Claimant and Mr. Teague were acquainted through their mutual involvement with horses. She knew that Mr. Teague and his family did not trust the Sheriff’s office because the Teagues believed that several months prior to February 1, 2004, one of the Stone County deputies unnecessarily shot and killed one of the Teague’s relatives, a Mr. Kyper. By contrast, Claimant knew Jimmy Teague had a lot of respect for the Missouri State Highway Patrol.

Claimant also knew Deputy Matt Maggard. In fact, Claimant testified that prior to February 1, 2004, she had to “clean up” several of Matt Maggard’s “messes.” She had disagreed with Deputy Maggard’s handling of several situations in the past and she was concerned about him being involved as a responder to the Teague residence. Claimant thought she might be able to avert a potentially combative situation if she could just talk to Jimmy Teague. Accordingly, she told the dispatcher that she was on her way, and she asked the Sheriff’s deputies to wait to do anything further until she got to the Teague residence.

When Claimant arrived at the Teague residence, Deputy Matt Maggard and another Sheriff’s deputy, Deputy Cozart, had already been in an altercation with individuals inside the residence. Feeling threatened, the deputies retreated from the house. They were standing outside when Claimant arrived. Claimant got out of her patrol car and headed for the residence. Seeing this, Deputy Maggard told Claimant, “I wouldn’t go in there if I was you.” Claimant proceeds to enter the residence, telling Deputy Maggard to stay outside and that she would handle this. She testified that even though she did not really know any of the details about what had transpired at the Teague residence prior to her arrival, she nevertheless felt safe entering the residence by herself because of her acquaintance with Jimmy Teague and her knowledge that the Teague family respected the Missouri State Highway Patrol.

Claimant located Jimmy Teague and his wife, Leta Teague, in the basement of the residence. Law enforcement had been called to the Teague residence because it was reported that Jimmy Teague had attempted suicide by taking some pills. He was refusing, however, to go with the Sheriff’s deputies to the hospital. After talking with the Teagues and observing that they were not resisting her, Claimant called the dispatcher and cancelled the call for “back-up.” Claimant was in the process of further conversation with the Teagues downstairs when she heard a loud commotion

that sounded like a fight upstairs.

Claimant ran up the stairs. At the top of the stairs, she said she saw Mr. Teague's son-in-law, Steve Davis, lying facedown on the floor and apparently restrained by three or four law enforcement officers. She saw one of the men who had been restraining Mr. Davis (later identified as a police officer from Branson West) get up and back away from Mr. Davis, who still appeared to be restrained by the other officers. Claimant then saw the officer from Branson West draw from his right side what she thought was a service revolver and aim it at Mr. Davis. Claimant said the officer began pulling the trigger on his weapon repeatedly. Believing that the officer was aiming a service revolver at Mr. Davis, Claimant began shouting, "No!" She tried to intervene because she thought, "they were going to execute Steve Davis."

In reality, the Branson West police officer had drawn his tazer gun, not a service revolver. Claimant watched as the tazer was used on Mr. Davis. Mr. Davis was then taken into custody and transported to the Sheriff's office where he was charged with several offenses related to his encounter with law enforcement at the Teague residence. After Mr. Davis was led out of the residence, Jimmy Teague was transported to the hospital, and Claimant transported Leta Davis to the Sheriff's office in her patrol car. Jimmy and Leta Teague were also going to be charged with offenses related to the encounter with law enforcement at their residence. On the way to the Sheriff's office with Leta Teague, Claimant testified that she contacted a bail bondsman for the Teagues.

Claimant testified that prior to February 1, 2004, she had never seen a tazer used on anyone. She also testified that the Patrol does not equip its troopers with tazer guns and that she had never been trained in the use of a tazer. Claimant testified that seeing Steven Davis tazed was one of the worst things she had ever seen. She stated that immediately following the events on February 1, 2004, she had the onset of severe depression and anxiety for which she sought medical treatment.

Claimant was prone to problems with anxiety and depression, and she had received medical treatment for those conditions long before the tazing incident on February 1, 2004. Claimant's testimony, the testimony of her psychologist, Dr. McGehee, and the other medical records admitted into evidence all show that Claimant sought treatment for depression and anxiety nearly two years prior to the tazing incident.

The first record of treatment for anxiety and depression is Dr. Gillispie's office note dated April 17, 2002. In April 2002, Dr. Gillispie put Claimant on an antidepressant medication, and she responded well to it. She was advised that she needed to be on an antidepressant "long-term." Claimant obtained refills of her antidepressant by calling Dr. Gillispie's office, but she was not actually seen again by Dr. Gillispie until August 12, 2003.

In August 2003, Claimant and her husband separated (later divorcing in November 2003). Also in August

2003, Claimant returned to see Dr. Gillispie to report unpleasant side effects from her antidepressant. Dr. Gillispie gave her samples of another medication to last 30 days, but Claimant testified that because her insurance would not pay for the new medicine, she quit taking it. The medical records from Skaggs Medical West show that Dr. Gillispie saw Claimant again on October 8, 2003, complaining of stress, and that she was referred to a psychologist, Dr. McGehee. However, Claimant testified that she did not follow up by seeing Dr. McGehee at that time. Thus, at the time of the tazing incident on February 1, 2004, the medical records in evidence indicate that Claimant was not taking her antidepressant medication and that she had not followed through on Dr. Gillispie's referral to a psychologist.

Although Claimant testified that she had immediate onset of anxiety and depression following the tazing incident and that she sought medical treatment for these symptoms, the medical records in evidence show that she was not diagnosed with post-traumatic stress disorder (PTSD) until almost three months after the tazing incident. Dr. McGehee first made the diagnosis of PTSD on May 11, 2004. Although Claimant had seen Dr. Gillispie's partner, Mark Schultz, M.D., on February 19, 2004, (eighteen days after the tazing incident), she was seen for complaints of left ear fullness and upper respiratory symptoms. Dr. Schultz's office note of February 19, 2004, specifically states that Claimant denied being anxious and that she denied symptoms of stress or depression. Claimant admitted at the hearing that she did not give a history of the tazing incident to Dr. Schultz or his nurse on February 19, 2004.

Following the events on February 1, 2004, Claimant said other law enforcement officers criticized her for her actions at the Teague residence and that her peers were accusing her of lying about that incident.

The Stone County Sheriff and the Stone County Prosecutor filed a formal complaint of misconduct against Claimant. The complaint was made known to Claimant on April 15, 2004. After an interview with the Sheriff and the Prosecutor, Lt. Eric Wilhoit, Assistant Director of the Patrol's Professional Standards Division, began an investigation of Claimant's conduct at the Teague residence as well as Claimant's involvement as a Patrol officer in several other matters. Lt. Wilhoit's investigation included a recorded interview of the Claimant on June 4, 2004. Claimant was accompanied by an attorney for that interview. On June 21, 2004, Claimant was notified that the complaint against her had been substantiated based on Lt. Wilhoit's investigation. Claimant filed a timely written response to the complaint, and the investigation file was then forwarded for review by the top five commanding officers of the Patrol, known as the Staff of the Missouri State Highway Patrol. The Staff, who collectively determined what type of discipline should be imposed, upheld the charges against Claimant. Major Penn of the Patrol personally served Claimant with a copy of the Formal Charges and the Offer of Discipline on July 14, 2004. Claimant was charged with violating several General Orders, which govern the conduct of Patrol employees. The Offer of Discipline made to the Claimant consisted of a transfer from Stone County to another Patrol unit in St. Joseph, Missouri, a demotion in rank, and suspension without

pay for forty hours. Claimant and Lt. Wilhoit both testified that although Claimant had a right to appeal the Formal Charges and Offer of Discipline, she waived that right on July 20, 2004, and elected to accept the discipline for her misconduct.

On July 23, 2004, Claimant notified her employer that she was claiming mental stress related to her work activities at the Patrol. A Report of Injury dated July 23, 2004, was submitted to the Division of Workers' Compensation by the Patrol.

Claimant testified that she lost no time from work following the tazing incident on February 1, 2004, until her psychologist, Donald E. McGehee, Ed.D, took her off work on July 29, 2004. Claimant remained off work under the care of her primary care physician, Jack Gillispie, M.D., and her psychologist, Dr. McGehee from July 29, 2004, until she returned to work as a trooper with the Patrol in St. Joseph, Missouri, on January 26, 2005.

This Claim for Compensation was filed on February 24, 2005.

The following timeline sets forth the events and medical treatment:

<b>02/01/2004</b>	<b>DATE OF TAZING INCIDENT</b>	<b>Teague Residence</b>
02/19/2004	Skaggs Medical West Mark Schultz, M.D. (for R. Jack Gillispie, M.D.)	Present complaints: History of nasal congestion for several weeks, post nasal drip, yellowish rhinorrhea. Pain and fullness in left ear.  Left otitis media, eustachian tube dysfunction, serous otitis media, acute sinusitis.  Generalized anxiety disorder with chronic use of Xanax. Discussed how she should be taking long-term antidepressant instead of Xanax. She denies being anxious, denies stress or depression.
04/15/2004		<i>Braswell notified of complaint.</i>
04/30/2004		<i>Lt. Wilhoit interviewed Prosecutor and Sheriff.</i>
05/11/2004	Donald E. McGehee, Ed.D	Having problems with boss and co-workers. Stress work-related. PTSD, depression – occupational. Depressive reaction to trauma due to peer inappropriate behavior.
06/04/2004		<i>Braswell interviewed by Lt. Wilhoit.</i>
06/21/2004		<i>Braswell notified by Lt. Wilhoit that</i>

		<i>complaint was classified as substantiated.</i>
07/14/2004		<i>Formal Charges and Offer of Discipline served on Braswell by Major Penn.</i>
07/19/2004	Jack Gillispie, M.D.	<p>Fitness for duty form:</p> <p>Should not work any duties as patrolman until further notice due to work related anxiety.</p>
07/20/2004		<i>Braswell waived right to appeal Formal Charges and accepted Offer of Discipline.</i>
7/20/2004	Donald E. McGehee, Ed.D	<p>Missouri Highway Patrol trooper for 16 years. Complication/conflict in Stone Co. between Sheriff's Department and the Patrol while handling large family conflict that ended up in arrest and damage being done to leader of this family. She had been reported as interfering w/Sheriff's Department, but there is strong political and some old resentments and angry feelings between these two agencies.</p> <p>She appeared today very distraught, tearful, upset w/herself because after a hearing, the Patrol decided against her and decided to move her to North Missouri for a year after a demotion, and she could never go back to Stone County.</p> <p>Selling her home in Stone Co. is an extremely stressful/traumatic experience to her. Has prided herself in being strong/good and has not had time off. Still has 8 months sick leave due to her.</p> <p>She came in and requested I give her a reason and recommend that she needs medical leave before she goes to North Missouri. Neither she nor her daughter want to go there, but she has no option.</p> <p>Caren is really distraught and caught in a lot of conflict relations.</p> <p>DIAGNOSIS: PTSD. Will try to get some of her sick leave. Intervention was trying to encourage her/help her feel she is capable to survive this. She is not alone, but there were some evil decisions made by certain people in her group that were all political. Scheduled for 8/10.</p>
07/23/2004		<i>Braswell notified Patrol she was claiming</i>

		<i>mental injury from work stress.</i>
07/25/2004		<i>Demoted and transferred to Troop H, Zone 10 (Decalb County). Suspended w/o pay for 40 hours.</i>
07/29/2004		<i>Braswell's last day of work as trooper in Stone County.</i>
07/29/2004	Donald E. McGehee, Ed.D	<p>Fitness for duty form:</p> <p>Not fit for duty. Caren is processing her severe stress reaction that occurred months past, that was work related and recurring incidents resulting from after the related event. She should not work at any duties til further notice. Her diagnosis is DSMIII No. 309.81, chronic.</p>
07/29/2004	Skaggs Medical West R. Jack Gillispie, M.D.	<p>Feels shaky, upset. Comes in today w/significant problems w/anxiety. Has not slept well in 3 or 4 months. Never gets hungry. When she tries to eat, she throws up. Losing weight and hair. Sometimes goes unconscious at night. Afraid to take Alprazolam medication.</p>



		<p>She is shaking/tearful. Having major stress at work, primarily related to possible interference in county law enforcement activity that she felt was inappropriate. Tried to intervene, but got into trouble. Has sent daughter out of area. Has some paranoia that some people in the area are watching her. No evidence of hallucinations or psychosis, except paranoia, which I'm not sure is warranted.</p> <p>Severe anxiety/stress, related to work. She's had PTSD previously. Encouraged her to take Alprazolam, enough to get some rest. In my opinion, she has no business working at her profession as a patrolman at the present time. Until she's had some sound restorative sleep, I don't think she can even make intelligent decisions about her own welfare. Follow-up with Dr. McGehee and I will consult with her.</p>
08/05/2004	Skaggs Orthopedic Associates John Huffman, D.O.	Bilateral foot pain in past 2 weeks. History of spur on R foot w/removal performed by Dr. McShane in 1994. Began hurting again 2 months ago. Recalls no injury or trauma, other than having her foot stepped on by horses.
08/10/2004	Donald E. McGehee, Ed.D	<p>PTSD, processing depression. Tearful and hurt, sad, but less anxious. Treatment:</p> <ol style="list-style-type: none"> <li>1) Discussed her exaggerated expectations of herself which is causing part of her trauma and pain.</li> <li>2) Angry over inaccuracies and discrepancies in the incident report by others.</li> <li>3) Focus on her forgiving self and others and build a new [illegible].</li> </ol> <p>Not fit for duty due to continued processing her severe stress reaction from previous events and incidents resulting in PTSD.</p>
08/25/2004 through 06/21/2005	Donald E. McGehee, Ed.D. and R. Jack Gillispie, M.D.	[Continued treatment for PTSD. See actual medical records.]
10/19/2004	Julie A. Warren, M.D.	[Evaluated by Dr. Warren, a psychiatrist, on referral from Drs. Gillispie and McGehee. See Dr. Warren's report.]
01/26/2005		<i>Braswell returned to work as a trooper for the Patrol in St. Joseph, Missouri.</i>
02/24/2005		<i>Braswell filed Formal Claim for</i>

		<i>Compensation</i>
05/13/2005		<i>Braswell resigned from the Highway Patrol.</i>
07/13/2005	Dale Halfaker, Ph.D.	[Referred by Bill Francis for assessment of PTSD. Maximum psychological improvement. Rated. See Dr. Halfaker's report.]

After her return to work, Claimant testified that she could not focus like she used to, that she could not remember routine procedures such as how to use handcuffs, that she no longer trusted her fellow Patrol officers, that she had a panic attack when she had to arrest a drunk driver, and that she “just couldn’t handle” her job as a trooper anymore. She resigned from the Patrol on May 13, 2005.

Claimant currently resides in West Memphis, Arkansas. She is employed full time as a security officer by Federal Express in Memphis, Tennessee.

#### CONCLUSIONS OF LAW:

1. Whether the claimant sustained an accident or occupational disease which arose out of the course and scope of employment.

In order to carry her burden of proving a compensable work-related mental stress claim (mental/mental claim), the Claimant must show more than ordinary stress from her work activities. Moreover, Claimant is precluded from being compensated for mental injury if it is caused by disciplinary or other personnel actions taken in good faith by her employer.

These requirements are imposed by the provisions of two subsections of RSMo 287.120 (2005). Both subsections limit the type of mental injury which will be considered to arise out of and in the course of employment in Missouri. Subsections 8 and 9 state as follows:

8. Mental injury resulting from work-related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is work-related and was extraordinary and unusual. The amount of work stress shall be measured by objective standards and actual events.

9. A mental injury is not considered to arise out of and in the course of the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer.

After carefully considering all of the evidence, I find that Claimant in this case did not prove the necessary elements of either subsection. Her mental injury or condition therefore did not arise out of and in the course of her employment with the Missouri State Highway Patrol. The Claimant did not show that her stress was extraordinary or unusual based upon objective standards and actual events under Section 287.120.8. Her perception of events was

different from the actual events. This is not sufficient. Furthermore, she failed to show that her stress was extraordinary and unusual as compared to the stress encountered by other similarly situated employees.

The Claimant also failed to show that her mental injury is compensable based on the actions of the employer under Section 287.120.9. Mental injury is excluded from coverage under the Missouri Workers' Compensation Act if the employer took the personnel actions in good faith. In this case, I find that the actions of the Employer in response to the complaint made against her and the subsequent investigation by the Professional Standards Division was taken in good faith. The Claimant did not begin to suffer from extreme stress symptoms until after she was advised of the formal complaint against her. I find that the stress the Claimant claims as a result of these actions is not compensable.

Consequently, I find that the Claimant has failed to prove that her mental injury arose out of the course and scope of her employment under Section 287.120. Therefore, this claim is denied. As a result of this ruling all other issues are moot.

Date: March 24, 2006

Made by: /s/ Margaret Ellis Holden  
Margaret Ellis Holden  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

Patricia "Pat" Secrest  
Patricia "Pat" Secrest  
*Director*  
*Division of Workers' Compensation*